IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 560 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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OIL & NATURAL GAS COMPANY - Appellant(s)
Versus
BALVANTBHAI BHUDERDAS PATEL & 1 - Defendant(s)

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Appearance :
MS KJ BRAHMBHATT for Appellant(s) : 1,
RULE SERVED for Defendant(s) : 1,
MR UR BHATT, AGP for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 01/03/2007

ORAL JUDGMENT

In this appeal the appellant has challenged the judgment and award made by the Ld. Extra Assistant Judge, Mehsana dated 14/8/2002 in

Land Acquisition Reference No. 950 of 1997. The reference was made under section 35(3) of the Land Acquisition Act, 1894 [hereinafter referred to as 'the Act']. The Court has decided the compensation @ of Rs.6-60 paise per sq.mtr., p.a., to be awarded to respondent no. 1, who is the original claimant.

2. The land of respondent no. 1 situated at Jotana village in Kadi Taluka of District Mehsana, has been temporarily acquired under the provisions of section 35 of the Act by the appellant for drilling wells. The Special Land Acquisition Officer i.e., respondent no. 2, after following the requisite procedure prescribed under section 35 of the Act, took possession of the land on 18/9/1996. Respondent no. 2 also determined the compensation in the form of rent at Rs.1-50 paise per sq.mtr., p.a. Since respondent no. 1 raised dispute as to sufficiency of the compensation, reference under section 35(3) of the Act was made.

2.1. On the basis of the material produced before it, the Reference Court held that the compensation determined by respondent no. 2 was inadequate and additional amount of Rs.5-10 paise per sq.mtr., p a was required to be awarded. Thus, the Court has awarded compensation @ of Rs.6-60 paise per sq.mtr., p a together with interest for the first year @ of 9% and thereafter @ 15% p a till realization. The Court also awarded 20% additional amount towards the compensation of crop on the amount already awarded by

respondent no. 2. Hence this appeal.

3. I have heard Miss KJ Brahmbhatt, learned advocate for the appellant and Mr. UR Bhatt, Ld. AGP for respondent no. 2. Respondent no. 1 though served, has not remained present. Miss Brahmbhatt has made three submissions. The first submission is that the Reference Court has not specified whether the additional amount of compensation will be applicable only for three years from the date of possession of the land. According to her, the Court cannot give decision beyond period of three years since the acquisition is under section 35 of the Act. The second submission is that since this is temporary acquisition under section 35 of the Act, provisions of section 34 for awarding interest will not apply and the Court has committed error in awarding interest in accordance with the said provisions. Lastly, she has submitted that the compensation determined by the Court is on higher side. Mr. Bhatt has supported the appellant.

4. From the record, it appears that respondent no. 2 took the possession of agricultural land belonging to respondent no. 1 on 18/9/1996 and determined the rate of compensation at Rs.1-50 paise per sq.mtr., p a. The land has been acquired for drilling purpose. The grievance of respondent no. 1 was that the respondent no. 2 ought to have awarded the compensation @ of Rs.7/- per sq. mtr., and amount determined by him was very less. Before the Court, it

was brought on record that respondent no. 1 earned three crops in a year. The land was situated on Kadi-Mehsana Road. It was also brought on record by respondent no. 1 that the prices of the land as well as the yield were going up every year. Keeping this fact in view and having regard to the reliable evidence produced by the appellant to substantiate it, the Court has increased rate of compensation by Rs.5-10 paise per sq.mtr. The appellant did not produce any evidence to controvert the case of the respondent no. 1. Miss. Brahmbhatt is also not in a position to point out any evidence which would justify the award made by respondent no. 2. Hence in the facts of the present case, I find that by and large the assessment regarding compensation made by the Court is proper and there is no need to interfere with it. Her submission with regard to the quantum of compensation is rejected.

4.1. So far as the submission with regard to rate of interest is concerned, she has placed reliance on the decision rendered by the Division Bench of tis Court in the case of Patel Govindbhai Ambaram v. Special Land Acquisition Officer reported in 2006 (2) G.L.R. 1152. In the said decision the Division Bench has held as under :-

> "7. The language of Sec. 34 of the Act is clear and unambiguous. It provides for payment of interest on the amount of compensation determined under the previous provision of th Act i.e., on the compensation awarded for acquisition of land under Part-II of the Act. Section 35 of the Act provides for acquisition for temporary occupation

of land and the payment of compensation for such temporary occupation. The same, however, does not specifically provide for payment of interest on such compensation. Thus, though the Legislature in its wisdom made it mandatory for payment of interest at the specified rate over the amount of compensation for the land acquired under Part II of the Act, it did not make corresponding provision in case of temporary occupation of land. In our view, therefore, the provisions contained in Sec. 34 of the Act shall not apply to the compensation awarded under Sec. 35 of the Act. We are of the opinion that in case of compensation awarded under Sec. 35 of the Act, the award of interest shall be discretionary and shall be governed by the principles governing exercise of judicial discretion and the ordinary law for award of interest.

8. In the present case, the learned Civil Judge has in its discretion awarded interest @ 9%. There is nothing on the record to show that the rate of interest awarded by the learned Civil Judge is inadequate. We, therefore, do not interfere with the rate of interest awarded by the learned Civil Judge. As to the date from which the interest has been awarded, we do agree that such interest shall become payable from the date on which the annual rent became payable till the date of actual payment. The impugned Awards of the learned Civil Judge, therefore, require to be modified to that extent."

In view of the aforesaid, I accept the submission of Miss Brahmbhatt and quash the direction of the learned Judge with regard to interest and I now direct that the interest will be @ 9% p.a.

4.2. The third submission of Miss Brahmbhatt is with regard to the

scope of reference under section 35(3) of the Act. According to her, the Court can only grant compensation for a period of three years from the date of possession and not beyond that. This submission is also required to be accepted in view of the judgment delivered by this Court in the case of Patel Shambhubhai Bhaichanddas v/s. State of Gujarat in First Appeal No. 2568 of 1999 dated 27/12/2006, wherein it is observed as under :-

> "10.1. Considering the provisions of Section 35 (1) of the Act, the occupant is not authorized to retain the possession of the land beyond the maximum period of three years, unless fresh procedure, as prescribed under Section 35 (2) is followed or parties have arrived at consensus for retention of the possession by the occupant beyond three years. So far as the facts of the case on hand are concerned, the possession of ONGC cannot be termed as unauthorized, illegal and wrongful because of the implied consent of the appellants. Since the Collector under Sections 35 and 36(1) of the Act is required to exercise power in relation to occupation of land for maximum period of three years, he cannot refer the difference as to the sufficiency of the compensation for the period subsequent to expiration of the term agreed upon by the parties or the maximum period of three years. The Court in its decision cannot cover any period subsequent to the expiration of the agreed term or three years. Such decision to that extent cannot be said to be legal and in accordance with the provisions of Chapter VI. It is immaterial whether the Reference is made within stipulated period or afterwards. Further when the Collector fails to act in accordance with the provisions of Section 36 (2) of the Act, on expiration of the maximum period of three years, the person interested in the land has to resort to remedy provided under

> common law, since the Act is totally silent on this aspect. Even for claiming mesne profits in appropriate case, such person has to take recourse to remedy under common law when the possession of the land in question is stated to be unauthorized or wrongful. So far as the present case is concerned, in view of the fact that the possession is not unauthorized, the appellants are not entitled to receive any mesne profits. However, the appellants are entitled to have additional compensation for a period of three years commencing from the date of occupation at the rate of Rs.0.50 paise per sq. mtr. For the period beyond three years, if the appellants want additional compensation, they have to approach the Civil Court under common law as subsequent retention of possession is on account of consensus arrived at amongst the parties which is contractual arrangement and not under the Act. Of-course, if parties so intend, it is open for them to take the decision of the Court as a guideline or as basis for determining the rent for further period."

The award made by the Reference Court will, therefore, cover only period of three years i.e., from 18/9/1996 and the interest payable thereon will only for a period of three years and not beyond that. In view of the same, this appeal is partly allowed.

After the dictation of the judgment, it is stated by Ms. Brahmbhatt that 40% of the award amount is put in Fixed Deposit with the Nationalized Bank. She has, therefore, submitted that the Registry of the Reference Court may be directed to withdraw the said amount and to entrust it to the appellant. In view of this judgment, request is required to be acceded to. The Reference

Court is directed to withdraw the award amount from the Nationalized Bank and hand it over to the appellant by Account Payee Cheque after due verification.

[Akshay H Mehta, J.]

* Pansala.